

§ 29.9402

any officer or employee of the Department to whom authority has heretofore been delegated or may hereafter be delegated to act in his stead.

(b) *Marketing area* means a geographical area within the flue-cured tobacco production area specified by the Secretary each year on the basis of his determination that significant quantities of tobacco produced in such area are ready for marketing.

(c) *Resale tobacco* means any tobacco offered for sale, or sold, by someone other than its producer.

(d) *Nonauction-purchased tobacco* means tobacco purchased at other than a bona fide auction sale, as defined in 7 CFR 29.1(d), on a designated market, as defined in 7 CFR 29.1(e).

(e) *Nonauction-purchased resale tobacco* means tobacco being offered for sale, or sold, at auction by a person who purchased it at other than a bona fide auction sale, as defined in 7 CFR 29.1(d), on a designated market, as defined in 7 CFR 29.1(e).

[39 FR 17754, May 20, 1974, as amended at 40 FR 31592, July 28, 1975]

§ 29.9402 Policy statement.

The sets of inspectors available to serve the flue-cured marketing areas are currently adequate to provide inspection service as rapidly as tobacco can be purchased, handled and processed by the currently existing facilities of the buyers, and the lack of inspection personnel is not a limiting factor to accelerated marketings or the extension of price support to producers. The sets of buyers assigned to the flue-cured markets by the buying industry are adequate to purchase tobacco as rapidly as it can be handled and processed by the buyers' facilities. However, the tobacco ready for marketing during most weeks of the marketing season substantially exceeds the quantities which can be purchased, handled and processed by the currently existing facilities of the buyers. Moreover, the total number of flue-cured markets are substantially greater than the number of sets of buyers assigned by the buying companies or the number of sets of available inspectors. In this situation, about 6 months is required to market a year's crop of flue-cured tobacco and all warehouses cannot be served at the

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same time by the available sets of inspectors and the sets of buyers assigned by the buying companies. As additional sets of inspectors would not relieve the situation, inspection service will be provided by assigning the available inspectors to the various marketing areas and to warehouses within the marketing areas in a manner determined by the Secretary to provide the best and most equitable service to all growers.

§ 29.9403 Flue-Cured Tobacco Advisory Committee.

To assist the Secretary in making the apportionment and assignment of inspectors, a Flue-Cured Tobacco Advisory Committee, appointed in accordance with the Federal Advisory Committee Act (5 U.S.C. Appendix I), shall advise and recommend to the Secretary marketing area opening dates and selling schedules for both designated and undesignated flue-cured tobacco to be sold in each marketing area and in each warehouse within each marketing area.

[39 FR 30475, Aug. 23, 1974, as amended at 49 FR 4067, Feb. 2, 1984; 50 FR 45806, Nov. 4, 1985; 51 FR 5987, Feb. 19, 1986; 67 FR 61468, Oct. 1, 2002]

§ 29.9404 Marketing area opening dates and marketing schedules.

(a) The Flue-Cured Tobacco Advisory Committee shall recommend, to the Secretary, marketing areas in the flue-cured tobacco production area and marketing area opening dates and selling schedules for both designated and undesignated tobacco for each marketing area and for the individual warehouses in each marketing area, which specify the length of time inspectors will be available to inspect designated tobacco and undesignated tobacco and/or the quantity of designated or undesignated tobacco to be marketed in each area and through each warehouse within such marketing area. In developing such opening date and selling schedules, the Committee shall take into account the following:

(1) When a sufficient volume of tobacco produced within a specific area of the flue-cured tobacco production area will be ready for marketing;

(2) The volume of tobacco ready for marketing which the producers have designated under §1464.2(e) of this title to be sold at specific warehouses and also the volume of tobacco ready for marketing which has not been so designated by the producer;

(3) With regard to undesignated tobacco, the Committee shall first determine, on the basis of all information available to it, the volume of undesignated tobacco in a geographical area, and then shall provide sales opportunity for each warehouse to sell an amount of the undesignated tobacco available for sale from that geographical area in proportion to the amount of tobacco designated to the warehouse in comparison to the total amount of tobacco designated in the marketing area in which the warehouse is located. Provided, however, that the Secretary may authorize additional undesignated sales opportunity if the warehouse provided proper proof that it does, in fact, have available for sale a volume of tobacco which has not previously been designated and which was eligible for designation to that warehouse had the producer chosen to designate and that such additional volume of tobacco warrants more sales opportunity than allowed by the schedule;

(4) The processing or redrying capacity of the industry and the number of inspectors available to provide inspection service during the specific period involved;

(5) Such other factors or information as may be necessary to develop an effective and equitable opening date and selling schedule.

(b) The Flue-Cured Tobacco Advisory Committee shall thereupon submit its recommended opening date and selling schedules for designated and undesignated tobacco and the geographic areas to be included in specific marketing areas to the Secretary together with a basis supporting its recommendations.

[39 FR 17754, May 20, 1974, as amended at 39 FR 30476, Aug. 23, 1974; 40 FR 24174, June 5, 1975; 40 FR 30917, July 24, 1975]

§ 29.9405 Issuance of marketing area opening date and selling schedules by the Secretary.

(a) The Secretary shall review the recommendations of the Flue-Cured

Tobacco Advisory Committee and based upon such recommendations and the basis therefor and such other information as may be available to him, shall specify the geographic areas to be encompassed by specific marketing areas, set the opening dates for sale within the marketing areas and issue the selling schedules for designated and undesignated tobacco. The inspection of flue-cured tobacco shall be in accordance with said schedules.

(b) The Flue-Cured Tobacco Advisory Committee shall recommend modifications in the opening date and marketing schedule during the flue-cured tobacco marketing season as may be warranted by changes in marketing conditions and the Secretary shall act thereon in the same manner as approving the initial opening date and marketing schedules.

[39 FR 17754, May 20, 1974, as amended at 39 FR 30476, Aug. 23, 1974]

§ 29.9406 Failure of warehouse to comply with opening and selling schedule.

(a) Each warehouse shall comply with opening and selling schedules issued by the Secretary for designated and undesignated flue-cured tobacco.

(b) For each of any two consecutive sales days during the marketing season a warehouse may exceed its scheduled sales opportunity for designated or undesignated tobacco, but the pounds sold during the second or third sales day must be adjusted so the warehouse will be back in compliance at the end of the third sales day or no tobacco inspection or price support services will be made available on the next succeeding sales day. Any such adjustment which is within 100 pounds of the required reduction shall be considered as in compliance with this section. During the closeout period, if a warehouse sells tobacco in excess of that allowed by the sales schedule on either of the last two sales days of the marketing season, then such excess sales shall be deducted from its scheduled sales opportunity on the first, or more, sales days of the next marketing season.

(c) The amount of the poundage adjustment specified in paragraph (b) of this section for a warehouse selling in